

BOARD OF APPEALS CASE NO. 5347

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BEFORE THE

APPLICANTS: Thomas & Carol Brockmeyer

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct an attached
garage within the required setback;
1004 Tamworth Road, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/23/03 & 4/30/03

HEARING DATE: June 4, 2003

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Record: 4/25/03 & 5/2/03

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Thomas and Carol Brockmeyer, are requesting a variance, pursuant to Section 267-35B, Table III, of the Harford County Code, to construct a garage within the 15-foot, total 35-foot side yard setback (7 feet, 32 feet total proposed) in an RR/Rural Residential District.

The subject parcel is located at 1004 Tamworth Road, Bel Air, MD 21015 within the Fairway subdivision and is more particularly identified on Tax Map 57, Grid 1A, Parcel 243, Lot 53. The parcel consists of 0.62 acres, is zoned RR and is entirely within the First Election District.

Mrs. Carol Brockmeyer appeared and testified that she and her husband recently purchased their home in the Fairway subdivision. The couple specifically sought a ranch style home to avoid steps. Mrs. Brockmeyer testified that she is an amputee and multiple story homes are less than useable for her. The home has no garage at the present time and the only place to build one without the need for a variance is to the rear of the existing home as a detached structure. Mrs. Brockmeyer indicated that she really wants an attached garage so that when she parks her car she is sheltered from ice, rain, snow as she goes from the garage to the house. A detached garage to the rear would not provide shelter from the elements as she is requesting. Additionally, a garage to the rear would sit up from the existing house because of the slope of the parcel front to rear. There are several large trees to the rear that would have to be removed if the garage was located there.

Case No. 5347– Thomas & Carol Brockmeyer

Significant grading would also be required if the garage were located to the rear of the home and her estimate is that grading would cost over \$8,500.00, an unnecessary and unwarranted hardship according to the witness. The witness pointed out the proposed location of the garage of Staff Report Attachment #7, photo #1. The witness testified that every house except one on her street has a 1 to 1-1/2 car garage. The garage is proposed to be 24 feet across the front yard and the existing house is 54 feet wide. An old car port was enclosed in the past and converted to interior living space. The garage will be offset from the front of the house by 2 feet to break up the front line of the home. The overall depth of the proposed garage is 30 feet as one goes to the rear of the parcel. The witness stated that she and her husband have created a nicely landscaped yard that she described as a “park-like” setting. In her opinion, if the garage were placed to the rear of her house, the adverse impact to her neighbors would be significantly greater than that resulting from the proposed location. In part, this would result from losing the view of the “park-like” appearance of the area.

Mr. Anthony McClune appeared as representative of the Department of Planning and Zoning. Mr. McClune stated that this is a unique parcel because of the topography, existing mature trees and rising slope of the parcel front to rear. Nearly every house in this neighborhood has an attached garage and they vary from one car to 3 car garages. Admittedly, according to McClune, the Applicants could construct a detached garage to the rear of the home but it would actually be set back further than the proposed garage, would require extensive and costly grading as well as removal of mature existing trees, none of which is desirable from a zoning standpoint. In McClune’s opinion and that of the Department, no adverse impacts to adjacent properties would result from approval of this request and the purposes of the Harford County Zoning Code would be satisfied. The proposed attached garage would be much like the other existing garages found in this neighborhood and placing it at the proposed location would avoid an unnecessary and unwarranted hardship on the Applicant in paying for expensive grading and tree removal which can be easily avoided by the grant of the minor variance requested. In McClune’s opinion, granting this variance is consistent with good planning and zoning principles and practices.

Case No. 5347– Thomas & Carol Brockmeyer

In opposition appeared Mr. Charles Corson who resides at 1002 Tamworth Road, immediately adjacent to the Applicants. Mr. Corson stated that he agreed with the Applicant that a garage placed to the rear of the Applicant's property would have a greater impact than the proposed garage. His objection had to do with deed restrictions that he believes appear in each deed related to properties in the neighborhood that require structures to be no closer to property lines than 20 feet. Although he could not articulate any particular adverse impact to him that would occur by the Applicant's proposed use and location, he nonetheless insisted that the deed restrictions on the property should prohibit approval.

In opposition appeared Mr. John McCarthy who resides at 1001 Tamworth Road, two houses away from the Applicant's property. Mr. McCarthy stated that he has lived in the neighborhood for 36 years and has worked hard to maintain the standards in the community. He is concerned that reduction of setbacks would violate the deed restrictions that limit structures to 20 feet minimum setbacks. Mr. McCarthy agreed that there are other garages in the neighborhood but did not believe any of them encroached into the 20 foot minimum setback restrictions of the neighborhood.

CONCLUSION

The Applicants are requesting a variance pursuant to Section 267-35B, Table III of the Harford County Code, to construct a garage within the 15-foot, total 35-foot side yard setback (7 feet, 32 feet total proposed) in an RR/Rural Residential District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

Case No. 5347– Thomas & Carol Brockmeyer

In the opinion of the Hearing Examiner, the parcel is unique. It is severely sloped and locating a garage to the rear, which would not need a variance, would require extensive grading and tree removal, both of which are undesirable from an environmental, zoning and planning perspective. Additionally, grading and tree removal would be very expensive representing an unwarranted financial hardship if a lessening of the zoning restriction could accomplish a reduction of the hardship without any adverse impact to adjoining properties or the purpose of the Code. In this case, none of the opponents particularly felt that the proposed garage at the proposed location would have any real adverse impact to their use and enjoyment of their properties. In fact, the most impacted adjoining property owner, Mr. Corson, indicated that he agreed with the Applicant that a garage to the rear of her home, although not requiring a variance, would have a greater impact on him and his property than the garage at the proposed location. Moreover, garages of this size and type are commonly found in this neighborhood. The Hearing Examiner is also cognizant of the special circumstances of this Applicant in attempting a reasonable approach to constructing an attached garage to allow her to safely ambulate between her automobile and her home in a safe and secure environment without exposure to natural elements that can be very unsafe for her.

The opponents have confused zoning law with covenants and restrictions contained in property deeds, homeowner's association restrictions and rules and other elements of contractual property rights that exist separate and apart from the zoning laws of Harford County. This case illustrates the potential conflict between zoning laws and private property restrictions that are contractual agreements. Here there are existing deed restrictions that prohibit construction any closer to a property line than 20 feet, yet, Harford County Zoning law, pursuant to Section 267-35B, Table III permits, without any variance, construction within 15 feet of the property line. There are many structures and uses that are allowed under existing zoning codes that may, because of private property restrictions, covenants within deeds or other instruments among private parties, not be allowed as a matter of contractual agreement among contracting parties.

Case No. 5347– Thomas & Carol Brockmeyer

For example, many subdivision associations have covenants and restrictions that are otherwise permitted under existing zoning laws but may be prohibited or subject to an architectural review board or committee by virtue of covenants and restrictions contained in private property instruments including deeds, neighborhood regulations and association rules. Such may be the case here, but those private property restrictions are not matters before the Hearing Examiner or the Board of Appeals and have no place in the making of zoning decisions.

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

While there may be additional hurdles these Applicants must cross before the proposed garage is allowed as a result of private property restrictions and their operation on the subject parcel, the Hearing Examiner is constrained to apply only the principles of zoning law as set forth in the Harford County Zoning Code and the Maryland Courts that have addressed the issue of variances to those provisions.

Case No. 5347– Thomas & Carol Brockmeyer

Therefore, applying the principles of Harford County and Maryland zoning law, the Hearing Examiner recommends approval of the Application subject to the following conditions:

1. The Applicant shall obtain any and all necessary permits and inspections.
2. The Applicant shall landscape along the side property line in the area of the proposed garage. A landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval.
3. The garage shall not be used as living quarters.
4. The garage shall not be used in furtherance of a business.
5. The garage shall not be used for the storage of commercial vehicles or contractor's equipment or supplies.

Date JUNE 19, 2003

**William F. Casey
Zoning Hearing Examiner**